

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

\* \* \* \* \*

Michael Shawn McCourt,

Plaintiff,

vs.

REPORT AND RECOMMENDATION

R. Rios, Warden; J. Anderson,  
Medical Administrator; Dr. J.  
Dey, Past Clinical Director; K.  
Peterson, Physicians Assistant;  
C. Mead, E.M.T.; L.K. Brandt,  
Physicians Assistant; and S.  
Lyngaas, Reporting Lieutenant;

Defendants.

Civ. No. 08-6411 (PAM/RLE)

\* \* \* \* \*

This matter came before the undersigned United States Magistrate Judge upon routine supervision of cases filed in this Division, and upon an assignment made in accordance with Title 28 U.S.C. §636(b)(1)(B).

This action was commenced on December 18, 2008, by the filing of a Complaint with the Clerk of Court. On September 14, 2009, it having appeared that one hundred and twenty (120) days had passed, and the Defendants Dr. J. Dey, and K. Peterson, had not been served with the Complaint and Summons, as required by

Rule 4(m), Federal Rules of Civil Procedure, we issued an Order, which stated as follows:

That the Plaintiff is directed to show good cause, in writing, within twenty (20) days of the date of this Order, for an extension of time in which service can be effectuated. In the absence of good cause shown, the Court shall Recommend that this action be dismissed for failure to effect proper service upon the Defendants Dr. J. Dey and K. Peterson and for failure of prosecution.

The Plaintiff has failed to abide by the terms of our directive and, since we have previously warned the Plaintiff of the potential consequences for his failure to timely serve the Defendants, and to abide by the Orders of this Court, we recommend that this action be dismissed as to Defendants Dr. J. Dey, and K. Peterson, for failure to comply with this Court's Order of September 14, 2009, for failure to effect proper service on the Defendants Dr. J. Dey, and K. Peterson, and for lack of prosecution.

NOW THEREFORE, It is --

RECOMMENDED:

That this action be dismissed without prejudice as to Defendants Dr. J. Dey, and K. Peterson, for failure to comply with this Court's Order of September 14, 2009, for failure to effect proper service on the Defendants Dr. J. Dey and K. Peterson, and for lack of prosecution.

BY THE COURT:

Dated: October 15, 2009

*s/ Raymond L. Erickson*  
Raymond L. Erickson  
CHIEF U.S. MAGISTRATE JUDGE

### NOTICE

Pursuant to Rule 6(a), Federal Rules of Civil Procedure, D. Minn. LR1.1(f), and D. Minn. LR72.2(b), any party may object to this Report and Recommendation by filing with the Clerk of Court, and by serving upon all parties **by no later than October 29, 2009**, a writing which specifically identifies those portions of the Report to which objections are made and the bases of those objections. Failure to comply with this procedure shall operate as a forfeiture of the objecting party's right to seek review in the Court of Appeals.

If the consideration of the objections requires a review of a transcript of a Hearing, then the party making the objections shall timely order and file a complete transcript of that Hearing **by no later than October 29, 2009**, unless all interested parties stipulate that the District Court is not required by Title 28 U.S.C. §636 to review the transcript in order to resolve all of the objections made.